

STATE ADMINISTRATION

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Testimony in Support of HB 153
Model Registered Agent Act
Before the Senate State Administration Committee
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Madam Chair and Members of the Senate State Administration Committee:

For the Record, I am Garth Jacobson, representing CT Corporation. CT provides business regulation compliance assistance and serves as a registered agent for over Nearly 500,000 business entities nationwide and represents over 7,500 entities in Montana. CT and our affiliates assist attorneys and businesses with document filing, UCC filings and searches, due diligence assistance, copywrite searches, tax information and notice alerts, Securities Exchange Commissions (SEC) compliance filings, electronic discovery, case management and numerous other related activities. In a nutshell, we are in the business law business.

I served as an advisor to the National Conference of Commissioners on Uniform State Laws (NCCUSL) Model Registered Agent (MoRAA) Committee. I attended all of the committee meetings and the session when NCCUSL adopted the model act. I also served as chief legal counsel to the Montana Secretary of State from 1989 until 1996 and also served on the State Bar committees that drafted the Montana version of Revised Model Business Corporations Act, Nonprofit Business Corporation Act, the Montana Limited Liability Company Act. Nearly my entire career has involved business regulation in both the private and public sector.

I am here today to testify in support of HB 153.

HB 153 is one of those "Trust Me" bills. Many eyes have reviewed and refined this legislation. The International Association of Commercial Administrators (IACA) initiated and developed this legislation. The American Bar Association, Business Law Section further refined the act and referred it to NCCUSL. NCCUSL organized the MoRAA committee and developed the legislation into its final form. The Montana Secretary of State's office tweaked MoRAA to meet its concerns for Montana businesses and consumers. It should be noted that MoRAA will be introduced in six states this year and is being sponsored by both Republicans and Democrats.

This bill focuses on one of the things that all liability-protected businesses have in common, namely registered agents. This legislation serves as the junction box for all business entities that must maintain registered agents. MoRAA establishes commonality and uniform application of the laws.

Initially it is important to understand the function of a registered agent. A registered agent is the person or entity designated to receive serve of process on behalf of a business entity. Because business entities are treated as separate from the people who own and operate them, there is a need to establish who and where the entity can be found and served. This is a duty of business to enjoy their liability protections. The law all states require the business entity to have an agent for service of process. With that background, MoRAA better defines the rules of that duty.

The following is quick analysis of the important sections and their application.

Section 2 the definitions section provides the common language for all business entities. The reason that the definitions section seems so long is that it can apply for all business entities. By analogy, the definitions are like the scene in the movie Apollo 13 where the engineers had to adjust a square air filter to fit a round air filter slot. These definitions permit corporations and LLCs to have their registered agents treated the same way. It is the junction box of definitions for common parts of business entities.

Section 4 requires registered agent to maintain both a post office and physical address. This is important so the registered agent can be located. It should be noted that the concept of registered office is gone but there still must be a physical findable location of the registered agent.

Section 5 establishes the means of appointing a registered agent. Unlike the present method, the submitter of business entity documents does not need to submit the "written consent" of a registered agent. This happens when an entity forms and submits its formation documents that name its registered agent. However, the submitter cannot name the registered agent without the agreement of the registered agent. Without that agreement, it would result in a violation of false swearing under 35-1-428 MCA or 45-7-202 MCA. The Secretary of State then makes available the listing of registered agents as one further method to verify the accuracy of the filing. Additionally, if the registered agent did not agree to serve in that capacity then it can resign and let the business entity select another agent.

Section 5 also introduces the concept of commercial registered agent and noncommercial registered agent. The commercial registered agent registers with the Secretary of State's office. It generally represents multiple business entities. The noncommercial registered agent likely is the person who represents his company or represents a few business entities. Registering as a commercial registered agent is entirely optional. A business entity naming a commercial registered agent need only list its name without its address. That address is already of file. Therefore, this makes it easier to file accurate documents and promotes electronic filing.

Section 6 provides for the filing of commercial registered agents. The section specifies the information required for becoming a commercial registered agent. This filing also permits existing registered agents who represent many entities to convert to commercial registered agents by making one filing. This makes for a smooth transition to the new system.

Section 7 establishes the procedure for termination of listing as a registered agent. This is one single filing and provides for notice to the entities of the change in status. It also gives those business entities time to find a new registered agent.

Section 8 provides for the change of registered agents by the business entity. It makes it much easier to change registered agents because the change does not need approval by the directors, shareholders or members. This reduces the red tape.

Section 9 is the procedure for a noncommercial registered agent to change its name or address.

Section 10 permits a commercial registered agent to change its name or address and only have one filing instead of possibly many filings. Again, this eliminates red tape.

Section 11 provides for the resignation of a registered agent. The registered agent must give notice to the business entity and then it has 31 days to find a new registered agent.

Section 12 establishes the ability for entities that are not otherwise required to register to do business with the state to name a registered agent. Examples of this are internet companies, catalog sales companies and other entities that are not required to file with the state. They can name a registered agent but not grant the state person jurisdiction by virtue of the filing. This provides some consumer protection by making internet companies easier to find.

Section 13 specifies service of process on business entities. It maintains the status quo methods established by the courts. Likewise, it preserves the Secretary of State's role by making it the agent of last resort. Another words if you cannot find the business entities registered agent, you can still make service through the Secretary of State.

Section 14 establishes the duties of the registered agent. This states what was assumed before.

Section 15 provides that the location of the registered agent does not create jurisdiction or venue for legal actions. This is not a factor for judicial determinations. It should be noted in the many conforming amendments in the remaining sections the reference to venue for Lewis and Clark County when the entity does not have a principal office located in the state. This reference only applies to lawsuits related to internal squabbles within the business entity. It does not apply for tort or contract law suits against a company. The venue for those actions remains status quo. This language does not create an advantage or disadvantage for either the defendants or plaintiffs. It merely prevents confusion and creates certainty. I hope that this means one less thing to litigate.

Ultimately, HB 153 benefits Montana by making its business entity laws friendlier. It will do this through well-defined and neutral laws related to registered agent. Likewise it make Montana more business friendly by making it easier to electronically file documents with the Secretary of State and reduce the number of required filings. All of this makes Montana a more attractive place to do business.

Thank you for your consideration of this testimony. I urge your favorable treatment of House Bill 153.